



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

FEB 17 2017

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Herman Honanie
Chairman
Hopi Tribe
P.O. Box 123
Kykotsmovi, Arizona 86039

Honorable Chairman Honanie:

The U.S. Environmental Protection Agency, Region 9 (EPA) is writing to notify the Hopi Tribe (Tribe) of the issuance of findings of violation (FOVs) of the Safe Drinking Water Act (SDWA) to four public water systems within the exterior boundaries of the Tribe's reservation and to request consultation and coordination with the Tribe regarding any enforcement action that results from those FOVs.

EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. See EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011). Furthermore, EPA's "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy" (January 17, 2001) (EPA's Tribal Enforcement Policy) outlines specific measures and consultative activities that EPA would perform when a respondent to an enforcement action is considered a "tribal facility." Tribal facilities are defined in EPA's Tribal Enforcement Policy to include facilities owned or managed by tribal governments, and non-tribally-owned or managed facilities in which a tribal government has a substantial proprietary interest or over which a tribal government has control in addition to facilities in which the tribal interest is "substantial" although not proprietary. Even when the target of an enforcement action in Indian country is not considered a tribal facility, however, it is still EPA's policy to consult with the tribal government on a government-to-government basis to the greatest extent possible and to the extent permitted by law if the tribe has an interest in that action.¹

The public water systems which EPA seeks to bring into compliance with the SDWA are located in the villages of Polacca (PWS ID # 090400106), Mishongnovi (PWS ID #090400394), Sipaulovi (PWS ID # 090400107), and Shungopavi (PWS ID # 090400259). In your August 11, 2015 letter you stated the Tribe's view that the Polacca, Mishongnovi, and Sipaulovi public water systems are not "tribal facilities" within the definition of EPA's Tribal Enforcement Policy. Shungopavi's public water system is similarly managed to the other three systems and

¹ In these situations, EPA would be unable to share enforcement sensitive or confidential business information with a tribal government if the tribe is not party to the enforcement action.

therefore EPA contemplates that the Tribe would also not view it as a “tribal facility” within the definition of EPA’s Tribal Enforcement Policy.

Please immediately notify us, however, if upon reconsideration the Tribe views the Shungopavi public water system or the other village systems as “tribal facilities.” Moreover, please understand that EPA has not verified or made an independent determination as to whether the Tribe has any ownership or operational control of these public water systems. For purposes of consultation on the FOVs issued to the villages only, however, EPA is willing to accept the Tribe’s view that the systems are not “tribal facilities,” as defined in EPA’s Tribal Enforcement Policy.

In terms of background, as outlined in the attached FOVs, which were issued to the villages on February 16, 2017, all four of the public water systems are in violation of the SDWA and its National Primary Drinking Water Regulations at 40 C.F.R. Part 141 Subpart G for failing to comply with the maximum contaminant level for arsenic. EPA has a responsibility to act on and resolve drinking water violations such as those pertaining to these systems to ensure that public water systems provide safe drinking water to their customers. See “Drinking Water Enforcement Response Policy” (December 8, 2009). EPA will attempt to work directly with the four villages to bring the public water systems into compliance with the SDWA.

Because the four public water systems are within the exterior boundaries of the Tribe’s reservation and because the public water systems are vital to the welfare of members of the Hopi Tribe and residents of the Hopi Reservation who rely on them for drinking water, EPA believes that these enforcement actions, including the nature of any resolution of them, will be of interest to the Tribe. Therefore, consistent with EPA’s policies on consultation, we are notifying and seeking consultation with the Tribe as an affected tribal government. Consultation would give the Tribe an opportunity to work with EPA to identify remedies and support and coordinate with the villages on effective resolution of the SDWA violations at the four public water systems.

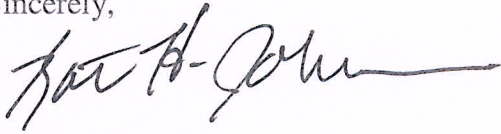
EPA requests that you or your designated consultation representative reply in writing **within 30 days** of receipt of this letter. In your response, please confirm whether or not you believe that the Shungopavi public water system is a “tribal facility” within the definition of EPA’s Guidance. Please also express whether or not you intend to engage in consultation regarding the arsenic exceedances at the four public water systems. Regardless of whether you decide to consult, EPA will attempt to keep the Tribe informed about the compliance issues and our enforcement response to the extent possible given confidentiality concerns with sharing information.

Please mail or email your response to the following address:

Hillary Hecht
SDWA/FIFRA Enforcement Section
U.S. Environmental Protection Agency
75 Hawthorne Street (ENF-3-3)
E-mail: Hecht.hillary@epa.gov

If you have any questions, please do not hesitate to call me at 415-972-3873, or Hillary Hecht of my staff at 415-947-4266. Legal questions should be directed to Janet Magnuson, Office of Regional Counsel, at 415-972-4570 or Kimberly Wells, Office of Regional Counsel, at 415-972-3056.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson", with a long horizontal flourish extending to the right.

Kathleen H. Johnson
Director
Enforcement Division

Enclosures: FOV Mishongnovi
 FOV Polacca
 FOV Shungopavi
 FOV Sipaulovi

cc Lionel Puhuyesva, Director, Hopi Water Resources Program

